

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
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6 UNITED STATES OF AMERICA

11-CR-6051(G)

7 vs.

8 WILLIAM H. SCHLIEBENER, JR.,
Defendant.

Rochester, New York
April 4, 2014
2:00 p.m.

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11 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
12 UNITED STATES DISTRICT JUDGE
13

14 WILLIAM J. HOCHUL, JR., ESQ.
United States Attorney
15 BY: MARISA J. MILLER, ESQ.
Assistant United States Attorney
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Rochester, New York 14614

17
18 MARIANNE MARIANO, ESQ.
Federal Public Defender
BY: JEFFREY CICCONE, ESQ.
19 Assistant Federal Public Defender
20 28 East Main Street, Suite 400
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Appearing on behalf of the Defendant
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23
24 COURT REPORTER: Christi A. Macri, FAPR, RMR, CRR, CRI
Kenneth B. Keating Federal Building
100 State Street, Room 2120
25 Rochester, New York 14614

P R O C E E D I N G S

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(WHEREUPON, the defendant is present).

THE COURT: Are you William Herbert Schliebener?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. This matter was on for a pretrial conference this afternoon and a jury trial on Monday. It's my understanding Mr. Schliebener wishes to proceed with a plea at this time.

MR. CICCONE: Yes, Your Honor.

THE COURT: Okay. Mr. Schliebener, over the next several minutes I'll be asking you a series of questions related to this plea. If there's anything you don't understand, take a step back and ask Mr. Ciccone.

Do you understand?

THE DEFENDANT: Okay.

THE COURT: If you want to ask the Court any questions, feel free to do that. However, I'd first ask you to ask Mr. Ciccone the question before you ask any questions of the Court.

The Government's represented by Ms. Miller.

Now, Mr. Schliebener, have you had a chance to review this plea agreement --

THE DEFENDANT: Yes, sir.

THE COURT: -- with your attorney?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** I'm going to place you under oath. If,
3 in fact, you were to give any false statements to the Court
4 while we have our conversation, do you understand you could be
02:06:14PM 5 charged with a separate crime of perjury?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** At this time the clerk will place you
8 under oath.

9 (WHEREUPON, the defendant was sworn).

02:06:24PM 10 **THE COURT:** You did have a chance to review this
11 plea agreement with Mr. Ciccone?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Are you satisfied with his
14 representation?

02:06:35PM 15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Okay. Do you understand that you have a
17 right to have an attorney present through any of these
18 proceedings through and including sentencing?

19 **THE DEFENDANT:** Yes, sir.

02:06:42PM 20 **THE COURT:** Okay. Is anybody forcing you or
21 coercing you into this plea?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Okay. How old are you?

24 **THE DEFENDANT:** I'll be 52 this year in August.

02:06:53PM 25 **THE COURT:** How far did you go in school?

1 **THE DEFENDANT:** Three, four years in college.

2 **THE COURT:** Are you currently taking any medications
3 or drugs?

4 **THE DEFENDANT:** I take Aleve every morning and
02:07:05PM 5 every night, and I take a 81 milligram baby aspirin every
6 morning.

7 **THE COURT:** Is any of that effecting your ability
8 to understand anything that's being said?

9 **THE DEFENDANT:** No, sir.

02:07:14PM 10 **THE COURT:** Okay. Do you have any other physical or
11 mental condition effecting your ability to understand
12 anything?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Okay. Now, you do understand that this
02:07:23PM 15 matter was scheduled for a jury trial Monday?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand when you plead guilty,
18 you're giving up your right to have that trial?

19 **THE DEFENDANT:** Yes, sir.

02:07:30PM 20 **THE COURT:** You're giving up your right to have the
21 prosecution, the Government prove this case against you.

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** You're giving up your right to allow
24 Mr. Ciccone or an attorney on your behalf to cross-examine
02:07:42PM 25 witnesses.

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** You're giving up your right to testify
3 or present any evidence.

4 Do you understand all that?

02:07:47PM 5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** When you plead guilty, do you understand
7 that it has the same force and effect as if a jury had
8 returned a verdict?

9 **THE DEFENDANT:** Yes, sir.

02:07:58PM 10 **THE COURT:** Okay. At this time I'm going to review
11 with you a plea agreement. Again, stop me if there's
12 something you don't understand.

13 Mr. Schliebener, this indicates that you've agreed
14 to waive indictment and plead guilty to a four count
02:08:18PM 15 superseding information.

16 Do you understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And do you understand what it means to
19 waive indictment?

02:08:26PM 20 **THE DEFENDANT:** Mr. Ciccone mentioned that to me
21 this morning to understand it a little bit better, yes, sir.

22 **THE COURT:** Okay. What it means to waive indictment
23 means that you're giving up your right to have these charges
24 presented to a grand jury.

02:08:38PM 25 Do you understand that?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Instead of an indictment filed by a
3 grand jury, you are being prosecuted by a superseding
4 information filed by the United States Attorney's Office.

02:08:49PM 5 Do you understand that as well?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** And that superseding information has the
8 same force and effect as an indictment filed by a grand jury.

9 Do you understand all that?

02:08:57PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Okay. And do you understand that
12 superseding information will charge you with transportation of
13 a minor occurring between October 1st, 2010 and October 2nd,
14 2010, in the Western District of New York; knowing production
02:09:15PM 15 of child pornography in Count 2 occurring in the Middle
16 District of North Carolina in the year 2000; the third count,
17 knowing production of child pornography occurring April 6th,
18 2003, in the Middle District of North Carolina; and the fourth
19 count, knowing production of child pornography occurring
02:09:39PM 20 July 10th, 2003, in the Middle District of North Carolina.

21 Do you understand those are the charges contained
22 in that superseding information?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Okay.

02:09:50PM 25 **MS. MILLER:** Your Honor, I apologize for

1 interrupting the Court. As we stand here, I'm realizing
2 North Carolina is rather bizarrely shaped in the way that the
3 districts are drawn.

4 It's my understanding that Mr. Schliebener was
02:10:03PM 5 living in the Middle District at the time that these charges
6 occurred.

7 However, I believe at the time of the Counts 2, 3
8 and 4 he was living in Godwin, North Carolina, which is the
9 Eastern District.

02:10:17PM 10 So I guess I would ask the Court's leave that I be
11 permitted to amend the superseding information to correct the
12 actual district in which that conduct occurred.

13 **THE COURT:** Would that be for Counts 2, 3 and 4?

14 **MS. MILLER:** Yes, Your Honor.

02:10:32PM 15 **THE COURT:** Any objection to that?

16 **MR. CICCONE:** No objection.

17 **THE COURT:** Eastern District?

18 **MS. MILLER:** It is the Eastern District, yes, Your
19 Honor.

02:10:43PM 20 **THE COURT:** Do you understand that, Mr. Schliebener?
21 That the superseding information is amended to reflect that
22 Counts 2, 3 and 4, which all involve knowing production of
23 child pornography, actually occurred in the Eastern District
24 of North Carolina?

02:11:10PM 25 Do you understand that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. Now, regarding Count 1,
3 transportation of a minor, which is transportation with intent
4 to engage in criminal sexual activity, do you understand that
02:11:25PM 5 that charge carries a mandatory minimum term of 10 years
6 incarceration?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** A maximum term of life imprisonment.

9 **THE DEFENDANT:** Yes, sir.

02:11:33PM 10 **THE COURT:** A fine of \$250,000, a mandatory \$100
11 special assessment, and a term of supervised release of
12 between five years and up to life.

13 Do you understand that?

14 **THE DEFENDANT:** Yes, sir.

02:11:47PM 15 **THE COURT:** Okay. If you're hesitant, just ask
16 Mr. Ciccone.

17 **THE DEFENDANT:** I wanted to ask a question about
18 that, but I never really -- I keep forgetting it.

19 **THE COURT:** Take a step back and ask him.

02:12:27PM 20 **THE DEFENDANT:** I understand it now.

21 **THE COURT:** All set?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Okay, great. Do you understand further
24 Counts 2 through 4, which charge you with knowing production
02:12:36PM 25 of child pornography, carries a mandatory minimum term of

1 imprisonment of 10 years, and a maximum term of imprisonment
2 of 20 years?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** A fine of \$250,000, a mandatory \$100
02:12:51PM 5 special assessment, and a term of supervised release of three
6 years.

7 Do you understand all that?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Now, do you understand that you're
02:13:01PM 10 pleading guilty here in the Western District of New York, and
11 Counts 2, 3 and 4 all occurred in the Eastern District of
12 North Carolina. And based upon that, through this plea
13 agreement you're waiving any defense based upon venue or the
14 place where the crime occurred?

02:13:21PM 15 Do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand the Court must order
18 restitution for the full amount of the victims' compensable
19 losses as determined by the Court?

02:13:35PM 20 **THE DEFENDANT:** Yes, sir.

21 **MS. MILLER:** Your Honor, I'll just put on the
22 record that at this point the Government has not received any
23 such requests.

24 **THE COURT:** Thank you. If you were sentenced to a
02:13:48PM 25 period of supervised release and you violated the conditions

1 of supervised release, that you could receive a sentence in
2 prison up to 11 years without credit for the time you served
3 on supervised release.

4 Do you understand that?

02:14:01PM 5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And that if you committed any criminal
7 offenses specified here -- what are these specifically?

8 **MS. MILLER:** Chapters 109, 117 and 110 relate to
9 child exploitation, receipt, child pornography, as well as the
02:14:21PM 10 enticement, transportation, coercion offenses.

11 **THE COURT:** Do you understand if you were to commit
12 any of those particular offenses for which there's a term of
13 greater than one year to be imposed, that you shall be
14 sentenced to a term of imprisonment of not less than five
02:14:38PM 15 years up to life if you violated the conditions of supervised
16 release?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. Do you understand that once
19 convicted of these offenses, that you would be required to
02:14:49PM 20 register under the Sex Offender Registration Notification Act?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** And that would mean you would have to
23 notify any local authorities where you may reside, where you
24 live, where you're employed or where you may be a student.

02:15:02PM 25 Do you understand that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And do you understand it's a separate
3 crime if you fail to register once required?

4 **THE DEFENDANT:** Yes, sir.

02:15:08PM 5 **THE COURT:** I'm going to review with you the
6 elements of these particular offenses as well as the factual
7 basis for those.

8 First the elements. Now, this is what the
9 Government would have to prove beyond a reasonable doubt in
02:15:25PM 10 order to have a jury or court find you guilty of these
11 charges.

12 Do you understand that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** First, regarding the first count,
02:15:33PM 15 transportation of a minor, the Government would have to prove
16 beyond a reasonable doubt first that you as the defendant
17 transported a minor referred to here as Minor No. 1 from the
18 State of New York to the State of North Carolina.

19 Do you understand that?

02:15:49PM 20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Second, that you as the defendant did so
22 with the intent that Minor No. 1 engage in criminal sexual
23 activity.

24 **THE DEFENDANT:** Yes, sir.

02:16:00PM 25 **THE COURT:** And, third, that you as the defendant

1 knew that Minor No. 1 was under the age of 18 --

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** -- years at the time of the offense.

4 Do you understand all that?

02:16:09PM 5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Okay. Regarding Counts 2, 3 and 4, the
7 Government would have to prove the following elements beyond a
8 reasonable doubt.

9 First, that all the victims as part of that knowing
02:16:23PM 10 production of child pornography were under the age of 18.

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** That you as the defendant employed or
13 used the victim to take part in sexually explicit conduct for
14 the purpose of producing a visual depiction of such conduct.

02:16:41PM 15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And, third, that the visual depiction
17 was produced using materials that had been mailed, shipped,
18 transported across state lines or in foreign commerce.

19 Do you understand that?

02:16:52PM 20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. I'm going to discuss with you the
22 factual basis. This is what the Government alleges was your
23 specific relevant conduct. Let me know if you agree with
24 this.

02:17:06PM 25 First of all, between October 1st, 2010, and

1 October 2nd, 2010, you as the defendant, William Herbert
2 Schliebener, were born in 1962.

3 Is that right?

4 **THE DEFENDANT:** Yes, sir.

02:17:21PM 5 **THE COURT:** That you knowingly transported a minor,
6 referred to as Minor No. 1, from Canandaigua, New York to your
7 residence in Sanford, North Carolina.

8 Is that right?

9 **THE DEFENDANT:** Yes, sir.

02:17:32PM 10 **THE COURT:** You transported that person with the
11 intent that she engage in criminal sexual activity with you.

12 Is that right?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** That you resided in Sanford,
02:17:45PM 15 North Carolina at the time?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** That the minor victim, Minor No. 1 as
18 she's referred to here, resided in Canandaigua, New York.

19 Is that right?

02:18:01PM 20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Minor No. 1 communicated with you using
22 a Blackberry Curve cell phone?

23 **THE DEFENDANT:** That's what -- I've been told that,
24 yes.

02:18:13PM 25 **THE COURT:** But as far as you know, it was a cell

1 phone?

2 **THE DEFENDANT:** A cell phone. That's all I know
3 about it.

4 **THE COURT:** Okay. And that you knew that Minor
02:18:21PM 5 No. 1 was not yet 18 years of age.

6 Is that correct?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** And at the time that you were 48 years
9 of age?

02:18:27PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Okay. That you and this Minor No. 1
12 exchanged text messages.

13 Is that correct?

14 **THE DEFENDANT:** Yes, sir.

02:18:35PM 15 **THE COURT:** That in the text message you indicated
16 to Minor No. 1 that you loved her.

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And sent texts about having sexual
19 activity with her.

02:18:49PM 20 Is that correct?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** That you made arrangements to drive to
23 Canandaigua, New York and pick up Minor No. 1.

24 Is that correct?

02:19:01PM 25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Okay. And that you told Minor No. 1
2 that you would pick her up on October 1st, 2010.

3 Is that right?

4 **THE DEFENDANT:** Yes, sir.

02:19:08PM 5 **THE COURT:** That, in fact, late on or about
6 October 1st or into the early morning of October 2nd, that you
7 arrived in the Western District of New York where Minor No. 1
8 was waiting for you.

9 Is that right?

02:19:22PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** You then picked up Minor No. 1 in a van
12 and drove to North Carolina with her.

13 Is that correct?

14 **THE DEFENDANT:** Yes, sir.

02:19:30PM 15 **THE COURT:** You arrived back in Sanford,
16 North Carolina late in the day on October 2nd, 2010.

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Minor No. 1 was discovered at your
19 residence in North Carolina.

02:19:41PM 20 Is that right?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** At that time law enforcement seized
23 certain computers and computer-related media from your
24 residence.

02:19:52PM 25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Among those items that were recovered on
2 the media were images depicting minors engaging in sexual
3 explicit conduct with you.

4 Is that right?

02:20:04PM 5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** One of the images that was created in
7 the year 2000 involved the use of an individual identified as
8 Minor No. 2, who was apparently a relative of yours.

9 Is that right?

02:20:19PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Okay. What?

12 **MR. CICCONE:** It's confusing, Judge, because we
13 don't know who --

14 **THE DEFENDANT:** I don't know which ones they're
02:20:27PM 15 referring to.

16 **THE COURT:** Do you want to give initials anyways?

17 **MS. MILLER:** Yes.

18 **THE COURT:** That would be helpful so we need --

19 **MS. MILLER:** I can certainly do that. Minor
02:20:39PM 20 No. 2, the individual's initials are C.S.

21 **THE DEFENDANT:** Okay.

22 **THE COURT:** Is that correct?

23 **THE DEFENDANT:** Yeah.

24 **THE COURT:** That person was a relative of yours?

02:20:46PM 25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Approximately 13 years of age?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** And that's 13 years of age when the
4 image was created?

02:20:55PM 5 **THE DEFENDANT:** That's the date, yes.

6 **THE COURT:** In the year 2000, around there?

7 **THE DEFENDANT:** Mm-hmm.

8 **THE COURT:** That there was another image recovered
9 from your computer involving Minor No. 3 whose initials are?

02:21:10PM 10 **MS. MILLER:** B.M.

11 **THE COURT:** Who was approximately between the ages
12 of 4 to 6 when the image was created.

13 Is that correct?

14 **THE DEFENDANT:** I think so, yes, sir.

02:21:38PM 15 **THE COURT:** Okay. And that particular image depicts
16 you engaged in sexually explicit conduct with that individual
17 B.M. who is also a relative of yours.

18 Is that correct?

19 **THE DEFENDANT:** Yes, sir.

02:21:49PM 20 **THE COURT:** Apparently this image displays a
21 creation date of around April 6th, 2003.

22 Is that right?

23 **MR. CICCONE:** Sorry, Judge. I was reviewing the
24 last one.

02:22:02PM 25 **THE COURT:** Take your time.

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** I want to be sure he understands

3 everything. You okay?

4 **MR. CICCONE:** Okay.

02:22:07PM 5 **THE COURT:** Is that correct?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** There's a third image recovered from
8 your computer involving Minor No. 4. Initials?

9 **MS. MILLER:** Her initials are S.R.

02:22:22PM 10 **THE COURT:** S.R., who was approximately between the
11 ages of 3 to 5 years old when the image was created.

12 Is that correct?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** And that this individual, known also
02:22:32PM 15 here as Minor No. 4, was in your care and custody.

16 Is that correct?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And the image depicts you engaging in
19 sexually explicit conduct with Minor No. 4.

02:22:42PM 20 Is that right?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** This had a creation date -- the image
23 creation date of July 10th, 2003.

24 Is that correct as well?

02:22:53PM 25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** That each of the images depicting these
2 three individuals we talked about -- Minor 2, Minor 3, and
3 Minor 4 -- were located on digital media which was
4 manufactured outside the State of North Carolina.

02:23:07PM 5 Is that correct?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** And consequently based upon that, that
8 the images were produced using materials that had traveled in
9 interstate commerce.

02:23:21PM 10 Do you understand that? Did your attorney explain
11 that to you?

12 **THE DEFENDANT:** That's one thing that -- I would
13 like to ask.

14 **THE COURT:** Go ahead, ask him.

02:23:31PM 15 **MR. CICCONE:** Judge, I think part of it is when I
16 explained it to Mr. Schliebener, my assumption was that the
17 Government would be able to prove that at trial, and I assume
18 that they will -- they can today offer you --

19 **MS. MILLER:** Why don't I do that just to put it on
02:23:45PM 20 the record?

21 **THE COURT:** Sure.

22 **MS. MILLER:** I anticipate that there would be a
23 Western Digital external hard drive. I can represent to the
24 Court based on testimony that this Court and others have seen
02:23:54PM 25 previously from Western Digital representatives that they, in

1 fact, do not manufacture anything in the United States, and
2 most of their products are manufactured in Malaysia, which
3 would be outside of the State of North Carolina.

4 **THE COURT:** Okay. Do you understand,

02:24:07PM 5 Mr. Schliebener? What that means in plain English is that the
6 hard drive where these images were found was actually produced
7 outside of the United States. So, obviously, they had
8 traveled in foreign commerce, at least let alone interstate
9 commerce.

02:24:27PM 10 Do you understand that?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you question that at all?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** Now, the next thing we're going to talk
02:24:34PM 15 about is the sentencing guidelines, which the Court must
16 consider in determining the appropriate sentence in this case.
17 I'm not bound by the guidelines, but I have to consider those,
18 so I'm going to review those with you at this time.

19 Do you understand that the first count involving
02:24:49PM 20 transportation of a minor, specifically Minor No. 1, involves
21 a base offense level of 28?

22 Do you understand that?

23 **THE DEFENDANT:** When Mr. Ciccone explained these
24 points, I still don't know what they mean, but I agree with
02:25:11PM 25 what he told me, yes.

1 **THE COURT:** Okay. I've going to try to go through
2 them carefully because, believe me, you're not the first one
3 to be confused by the sentencing guidelines.

4 Sentencing guidelines are really a chart of
02:25:23PM 5 offenses graded through numbers based upon the seriousness of
6 the offense. And there are certain offenses that have a
7 particular guideline number, base offense level, and there's
8 adjustments to that upward and downward.

9 Do you understand that?

02:25:38PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Ultimately, the Court will come up with
12 a number called the "total offense level," put it together
13 with a criminal history category of an individual based upon
14 their criminal history, and then there's a chart which shows
02:25:53PM 15 the range of sentence that the Court can impose.

16 Do you understand that? Have you seen the
17 sentencing chart? Did you show this at all?

18 **MR. CICCONE:** Yes.

19 **THE COURT:** What I'm showing you is a sentencing
02:26:04PM 20 chart. Do you know what I mean now?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** And so the Court uses a base offense
23 level, along with the criminal history, to determine a range
24 of sentence under the guidelines.

02:26:15PM 25 Do you understand that?

1 **THE DEFENDANT:** Mm-hmm.

2 **THE COURT:** That's just one consideration of the
3 Court.

4 So starting here, the offense level for the first
02:26:23PM 5 charge, transportation of a minor, is a level 28, base offense
6 level of 28.

7 Do you understand that now?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Okay. There's some adjustments to that,
02:26:36PM 10 including a two level increase pursuant to the fact the
11 allegation that this involved undue influence of a minor.

12 Do you understand that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** There's an additional two level increase
02:26:50PM 15 based upon the offense involving the use of a computer.

16 Do you understand that as well?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And there's a two level increase based
19 upon the allegation that this involved the commission of
02:27:03PM 20 sexual activity.

21 Do you understand that?

22 **MR. CICCONE:** Judge, that enhancement is actually in
23 dispute. That's going to be something that we will argue at
24 the time of sentencing. So as you'll see coming up, there's
02:27:15PM 25 two options as to the final guideline calculation.

1 **THE COURT:** Mr. Schliebener, that last two level
2 increase, because the offense involved an allegation of a
3 commission of a sex act, there would be a two level increase
4 if that is actually proven.

02:27:39PM 5 Do you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Your attorney's indicating -- I'll get
8 to this a little further -- that he's going to challenge that
9 they can prove that if that increase, whether or not that
02:27:48PM 10 increase should be applied.

11 Do you understand?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Based upon that, those six level
14 increases, if they were all to apply, do you understand that
02:28:09PM 15 the adjusted offense level is a 34? 28 plus those six levels.

16 Do you understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. Now, the counts we're going to
19 talk about, Counts 2, 3 and 4, production of child pornography
02:28:24PM 20 involving a minor, first of all, the first charge involving
21 Minor No. 2, do you understand that charge has a base offense
22 level of 27?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** That there would be a two level increase
02:28:39PM 25 based upon the fact that the minor was under the age of 16?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And there would be a two level increase
3 based upon the allegation that the minor is a relative of
4 yours.

02:28:50PM 5 Do you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** So when the Court adds those four level
8 increases to the base offense level of 27, do you understand
9 the adjusted offense level for Count 2 is 31?

02:29:02PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Regarding Count 3, again production of
12 child pornography involving Minor No. 3, the base offense
13 level is 27. There is a four level increase based upon the
14 minor being under the age of 12, and a two level increase
02:29:24PM 15 based upon the minor being a relative of yours.

16 Do you understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. Adding those six level increases
19 to the base offense level of 27 would result in an adjusted
02:29:37PM 20 offense level of 33.

21 Do you understand that as well?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Finally, Count 4, which is the
24 production of child pornography involving Minor No. 4, the
02:29:48PM 25 base offense level again is 27. With a four level increase

1 based upon the allegation that the minor had not attained the
2 age of 12, and a two level increase based upon the allegation
3 that the minor was within your control and custody.

4 Do you understand that as well?

02:30:08PM 5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Based upon adding those six level
7 increases, the base offense level of 27, that the adjusted
8 offense level for that particular count would be 33.

9 Do you understand all that?

02:30:21PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Now, to make it even more complicated,
12 because there's multiple counts, there's different adjustments
13 that can occur. They're called "units" based upon the
14 different counts.

02:30:41PM 15 In this particular case, based upon Counts 2, 3 and
16 4, it would result in a four level addition, which would then
17 increase the offense level to 38.

18 Do you understand that?

19 **THE DEFENDANT:** Yes, sir.

02:30:59PM 20 **MR. CICCONE:** Or 37, Judge. I'm saying or 37
21 depending on how the parties get to argue the one enhancement.

22 **THE COURT:** All right. As your attorney just
23 explained, it could also involve an adjusted offense level of
24 37 based upon the arguments of counsel regarding these various
02:31:19PM 25 adjustments.

1 Do you understand that?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand the Government agrees
4 it will not oppose a recommendation of a two level downward
02:31:30PM 5 adjustment, and will apply to the Court for an additional one
6 level downward adjustment based upon your acceptance of
7 responsibility by your plea of guilty and your acknowledgment
8 of your involvement and responsibility for these offenses?

9 Do you understand that?

02:31:46PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Based upon that, again, depending if we
12 started at a level 38, three level adjustment would result in
13 a total offense level of 35. And if the adjusted offense
14 level is 37, minus the three for acceptance of responsibility,
02:32:02PM 15 the total offense level would be 34.

16 Do you understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. The second part of the
19 calculation involves criminal history. It's my understanding
02:32:11PM 20 your criminal history category is level I, which is the lowest
21 possible level.

22 Do you understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** If the total offense level is 35, with a
02:32:23PM 25 criminal history category of I, the sentencing range under the

1 guidelines would be between 168 months and 210 months.

2 Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** It would involve a fine of between
02:32:37PM 5 \$20,000 and \$200,000, and a period of supervised release
6 between five years and life.

7 Do you understand all that?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Okay. If on the other hand the total
02:32:48PM 10 offense level is 34 with a criminal history category of I,
11 that the sentencing range would involve a term of imprisonment
12 between 151 months to 188 months, a fine of \$17,500 to
13 \$175,000, and a period of supervised release of between five
14 years and life.

02:33:10PM 15 Do you understand that as well?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand both the Government
18 and your counsel are agreeing to the calculations of the
19 guideline sentences I just read to you? He's not agreeing
02:33:24PM 20 that they all apply, but he's agreeing that they calculated
21 that properly.

22 Do you understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Do you understand that if for some
02:33:33PM 25 reason this plea was vacated or set aside, that the charges

1 would be reinstated as they were previously charged against
2 you?

3 Do you understand that?

4 **THE DEFENDANT:** Yes, sir.

02:33:44PM 5 **THE COURT:** And also you'll be giving up your
6 defense, what's called the "statute of limitations defense,"
7 which is the time limit to file charges.

8 Do you understand that as well?

9 **THE DEFENDANT:** Yes, sir.

02:34:07PM 10 **THE COURT:** Do you understand that the Government
11 has reserved their right to provide Probation with information
12 regarding these offenses as well as your background and
13 criminal history?

14 **THE DEFENDANT:** Yes, sir.

02:34:16PM 15 **THE COURT:** That they are reserving their right to
16 respond at the time of sentencing to any statements you make
17 to Probation or to the Court?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** That they can advocate for a specific
02:34:26PM 20 sentence consistent with this agreement.

21 Do you understand that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** That they can oppose an application for
24 downward departure.

02:34:37PM 25 Do you understand that as well?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And that at the time of sentencing, the
3 Government will move to dismiss the open count pending against
4 you.

02:34:47PM 5 Is that correct?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Do you understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Do you understand you've agreed to
02:34:52PM 10 provide any financial records or information to determine your
11 ability to pay any unpaid financial obligations, including
12 fines or restitution or assessments?

13 Do you understand that?

14 **THE DEFENDANT:** Yes, sir.

02:35:04PM 15 **THE COURT:** Okay. And do you understand you're
16 limiting your right to appeal the sentence imposed as long as
17 the Court does impose a sentence within the parameters of this
18 agreement?

19 Do you understand you're giving up your right to
02:35:17PM 20 appeal that particular sentence? Do you understand that?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** There's also a provision here indicating
23 that you've agreed to forfeit or give up any right or interest
24 in computer media seized from your residence in or about
02:35:36PM 25 October 2010.

1 Is that correct?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you have anymore specific description
4 of that?

02:35:43PM 5 **MS. MILLER:** Yes, Your Honor. There will be a
6 laptop. There is, I believe in addition to the red Western
7 Digital hard drive, I believe there's also a silver external
8 hard drive, and there are a few thumb drives and SD cards.

9 **THE COURT:** Those were all seized from the
02:35:57PM 10 defendant's house?

11 **MS. MILLER:** They were, Your Honor.

12 **THE COURT:** Okay. Do you understand that,
13 Mr. Schliebener?

14 **THE DEFENDANT:** Sir?

02:36:02PM 15 **THE COURT:** Do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** You'll be giving up your right to
18 request any of that particular equipment back.

19 Do you understand that?

02:36:10PM 20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** That would be forfeited to the
22 Government for disposal.

23 Do you understand?

24 **THE DEFENDANT:** Yes, sir.

02:36:17PM 25 **THE COURT:** Okay. Anything else in the plea

1 agreement?

2 **MS. MILLER:** Not in the plea agreement, no. Thank
3 you, Your Honor.

4 **THE COURT:** Mr. Schliebener, do you understand
02:36:27PM 5 everything at this point?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Anything you need to ask Mr. Ciccone?

8 **THE DEFENDANT:** No, sir.

9 **THE COURT:** If you could sign the plea agreement?

02:37:20PM 10 The Court does have the plea agreement which has
11 been signed in open court by Ms. Miller, by Mr. Ciccone and by
12 the defendant Mr. Schliebener.

13 Do you have the waiver?

14 **MR. CICCONE:** Doing it right now, Judge.

02:37:36PM 15 **THE COURT:** Mr. Schliebener, do you understand that
16 by signing this document called the "waiver of indictment," we
17 discussed this at the beginning of our conversation, what
18 you're doing is you're giving up your right to have this case
19 presented to a grand jury?

02:38:08PM 20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** And instead of an indictment filed by a
22 grand jury, there will be a superseding information filed
23 against you charging in Count 1 of transportation of a minor
24 and in Counts 2, 3 and 4 with knowing production of child
02:38:22PM 25 pornography.

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** That that information has the same force
3 and effect as an indictment filed by a grand jury.

4 **THE DEFENDANT:** Yes, sir.

02:38:28PM 5 **THE COURT:** Okay. Based upon the defendant's
6 indication he is understanding the Court, I'll sign the waiver
7 of indictment at this time.

8 Are you ready to proceed at this time with the
9 plea?

02:38:47PM 10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Anything you want to ask Mr. Ciccone?

12 **THE DEFENDANT:** No.

13 **THE COURT:** Mr. Schliebener, I'm going to read these
14 counts to you and then ask you how you plead to each of the
02:38:59PM 15 counts, guilty or not guilty.

16 Count 1 charges you with transportation of a minor,
17 reading as follows: That between on or about October 1st, 2010
18 and on or about October 2nd, 2010, in the Western District of
19 New York and elsewhere, that you the defendant, William

02:39:22PM 20 Herbert Schliebener, Junior did knowingly transport an
21 individual who had not attained the age of 18 years, that is
22 Minor No. 1, in interstate commerce from Canandaigua, New York
23 to the State of North Carolina with intent that such
24 individual engage in sexual activity for which any person can
02:39:44PM 25 be charged with a criminal offense.

1 I'd ask you how you plead to that charge, guilty or
2 not guilty?

3 **THE DEFENDANT:** Guilty.

4 **THE COURT:** The second count, knowing production of
02:39:57PM 5 child pornography, stating that some time in the year 2000,
6 the exact date being unknown, in the Eastern District of
7 North Carolina, that you the defendant, William Herbert
8 Schliebener, Junior, did knowingly use a minor, a person under
9 the age of 18 years, that is Minor No. 2, to engage in
02:40:19PM 10 sexually explicit conduct for the purpose of producing a
11 visual depiction of such conduct, which visual depiction was
12 produced using materials that had been mailed, shipped and
13 transported in interstate and foreign commerce.

14 How do you plead to that charge?

02:40:37PM 15 **THE DEFENDANT:** Guilty.

16 **THE COURT:** The third count charges you with
17 knowing production of child pornography on or about April 6th,
18 2003, in the Eastern District of North Carolina, that you the
19 defendant, William Herbert Schliebener, Junior, did knowingly
02:40:55PM 20 use a minor, a person under the age of 18 years, that is Minor
21 No. 3, to engage in sexually explicit conduct for the purpose
22 of producing a visual depiction of such conduct, which visual
23 depiction was produced using materials that had been mailed,
24 shipped and transported in interstate and foreign commerce.

02:41:19PM 25 **THE DEFENDANT:** Guilty.

1 **THE COURT:** The fourth count, knowing production of
2 child pornography, indicating that on or about July 10th,
3 2003, in the Eastern District of North Carolina, the
4 defendant, William Herbert Schliebener, Junior, did knowingly
02:41:37PM 5 use a minor, a person under the age of 18 years, that is Minor
6 No. 4, to engage in sexually explicit conduct for the purpose
7 of producing a visual depiction of such conduct, which visual
8 depiction was produced using materials that had been mailed,
9 shipped and transported in interstate and foreign commerce.

02:42:02PM 10 How do you plead to that at this time?

11 **THE DEFENDANT:** Guilty.

12 **THE COURT:** The forfeiture allegation we can handle
13 at the time of sentencing?

14 **MS. MILLER:** We can, Your Honor.

02:42:10PM 15 **THE COURT:** The Court has had the opportunity to
16 observe Mr. Schliebener. He did indicate that he takes some
17 medications for headaches.

18 Is that right?

19 **THE DEFENDANT:** Migraine headaches, arthritis, and
02:42:26PM 20 to keep my blood running, something other through my -- I
21 don't know what the aspirin is for. The doctor just told me
22 to take it.

23 **THE COURT:** In any event, Mr. Schliebener did
24 indicate he did take aspirin and other medication that in no
02:42:39PM 25 way affects his ability to understand anything that's being

1 said.

2 That he has been represented by Mr. Ciccone, that
3 he's satisfied with his representations. That he did review
4 the plea agreement prior to today with him. Nobody forced him
02:42:54PM 5 or coerced him into this particular plea.

6 He did articulate a factual basis to support each
7 of the counts of the superseding information, including one
8 count of transportation of a minor and three counts of knowing
9 production of child pornography.

02:43:17PM 10 He did indicate he understood his right to proceed
11 to trial . In fact, is aware of the fact that the Court was
12 prepared to pick a jury on Monday of next week to begin jury
13 selection in this particular matter and that he was giving up
14 that right by pleading guilty, and also his right to have the
02:43:35PM 15 Government prove the case against him, and his right to
16 question any evidence, present any evidence himself or testify
17 at any proceeding.

18 Based upon all that, the Court does find that the
19 plea is in all respects knowing and voluntary. The Court does
02:43:54PM 20 acknowledge that Mr. Schliebener on a few occasions did ask
21 Mr. Ciccone some questions, very appropriate questions, based
22 upon most particularly the calculation of the guidelines,
23 which is confusing for anybody, but he did indicate that he
24 did speak to Mr. Ciccone and did understand what the Court was
02:44:14PM 25 advising him of.

1 Based upon all that, the Court does find the plea
2 to be in all respects knowing and voluntary and does accept
3 the plea of guilty to the four counts of the superseding
4 information.

02:44:45PM 5 I will put the matter on for July 10th, 3:00 p.m.
6 for sentencing.

7 Mr. Schliebener, Probation will be in contact with
8 you to discuss this matter, but it's important that
9 Mr. Ciccone be aware of any contact you have because I'm sure
02:45:02PM 10 he wants to be present or aware of what you have to say to
11 Probation. It's important the information in that report, it
12 will determine ultimately what sentence I impose.

13 I'll obviously hear from the Government, from your
14 counsel and from you and from Probation to determine the
02:45:18PM 15 appropriate sentence, okay?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** He's currently being detained?

18 **MR. CICCONE:** Yes, Judge.

19 **THE COURT:** He'll continue to be detained pending
02:45:24PM 20 sentencing. Okay, thank you.

21 (**WHEREUPON**, the proceedings adjourned at 2:46 p.m.)

22 * * *

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CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Western District of New York before the Honorable Frank P. Geraci, Jr. on April 4th, 2014.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR-CRI
Official Court Reporter